



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/729,693	12/06/2000	Shantha C. Nalur	8265-366	8558

28765 7590 03/15/2002

WINSTON & STRAWN
200 PARK AVENUE
NEW YORK, NY 10166-4193

EXAMINER

PADEN, CAROLYN A

ART UNIT	PAPER NUMBER
----------	--------------

1761

DATE MAILED: 03/15/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/729,693

Applicant(s)

NALUR ET AL.

Examiner

Carolyn A. Paden

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 August 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 9-12 is/are allowed.
- 6) ☒ Claim(s) 1-4, 7, 13, 14 and 19 is/are rejected.
- 7) ☒ Claim(s) 5, 6, 8 and 15-18 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☒ None of:
1) ☒ Certified copies of the priority documents have been received.
2) ☐ Certified copies of the priority documents have been received in Application No. _____.
3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4 and 7 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Herzing (4,464,411).

Herzing discloses a confectionary coating containing polyglycerol ester emulsifiers. At column 6, lines 26-38, milk chocolate is disclosed to be a coating composition. At Table 2, column 5, lines 50-64, the emulsifiers are disclosed to have the HLB values and melting points of the claims. The amount of the polyglycerol emulsifier in the product is shown at Table 3.

Claims 1-4 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Player (4,524,026).

Player discloses hard butter compositions for coatings. The emulsifier in the product could include triglycerol mono-stearate, which has an HLB value of 7.2 and a Mettler Dropping point of 52-55 C. At column 7, examples 1-4 the formulation was prepared to have a chocolate flavor.

Claims 1 and 3 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Krawczyk (5,505,982).

Krawczyk (5,505,982) discloses co-processed cellulose surfactant made from Avicel microcrystalline cellulose and sorbitan mono-stearate. The sorbitan monostearate is stated to have an HLB of 4.7. The mixture is heated to 71.1 C to keep the combination

melted (see example 1). In example 6 the co-processed composition is used for making chocolate.

Claims 13, 14 and 19 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Varvil (4,335,157) as further evidenced by Gunstone at page 229.

Varvil discloses fluid shortening that contains sodium stearoyl-2-lactylate and liquid soybean oil along with other ingredients (see example 1). At column 6, lines 45-46 the melting point of the sodium stearoyl-2-lactylate is disclosed to be at about 135-145F. Gunstone is cited for evidence of the HLB value of sodium stearoyl-2-lactylate.

Claims 9-12 are allowed.

None of the references show the combination of a chocolate with the emulsifier that is set forth in the claims that additionally utilizes a warming step at the particular point that is set forth in the claims.

Claim 5, 6, 8 and 15-18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

None of the references show a chocolate product or an oil having the particular properties that are set forth in the claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A. Paden whose telephone number is 703-308-3294. The examiner can normally be reached on Monday to Friday from 7 am to 3:30pm.

US Serial No. 09/729,002³
Art Unit 1761

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9310 or 703-872-9311 for after final responses.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

Carolyn Paden
CAROLYN PADEN 3-11-02
PRIMARY EXAMINER
GROUP 1300-1761